



Primary Authority Partnership
Warwickshire County Council Trading Standards
Old Budbrooke Road, Warwick, CV35 7DP

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Propertymark
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The Property Ombudsman
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Primary Authority Advice Reference WTS/PM/TPO/36

This Primary Authority Advice has been produced by Warwickshire County Council Trading Standards Service, in partnership with The Property Ombudsman and Propertymark, for use by member businesses as an aid to complying with the law. If you follow this advice correctly, your local Trading Standards Service should respect this and not ask you to comply with the law in a different way. If you are contacted by a local authority enforcement body, please inform them that you are a member of the scheme.

Advice requested:

1. What rules must an agent follow when marketing residential properties as buy-to-let investment opportunities with rental income guarantees on behalf of developers?
2. What due diligence should an agent exercise when marketing properties on behalf of clients who are developers?

Legislation considered:

Consumer Protection from Unfair Trading Regulations 2008 (as amended)

Business Protection from Misleading Marketing Regulations 2008 (as amended)

Other Material considered:

National Trading Standards Estate and Letting Agency Team Guidance on Property Sales and Lettings, September 2015, Reviewed August 2020 ("*NTS Guidance*")

Propertymark Property Information Questionnaire

Assured Advice Issued:

1. We understand that prospective buy-to-let properties may be marketed with rental income guarantees in two ways: 'rent to rent', and insurance.

In the rent to rent situation, the property owner/buy-to-let landlord uses a commercial lease agreement to let the property to a business, who in turn sub-let to the final tenant via an assured shorthold tenancy agreement.

Alternatively, a developer marketing new properties to buy-to-let landlords may simply offer an insurance policy covering the rental income as part of the deal.

In either situation, the person buying the property, being a buy-to-let landlord, would be a 'trader', for the purposes of the above legislation. An agent marketing properties to such purchasers would therefore need to ensure compliance with the Business Protection Regulations.

The rental guarantee is presumably offered as a marketing incentive, so the agent and developer will want to promote it; and it is to be expected that the prospective buy-to-let purchaser, being a trader, will undertake some due diligence before entering into any contracts. However, we would suggest that some buy-to-let purchasers will be more experienced in the business than others, so we would advise agents to be clear in their advertising that purchasers should seek their own independent legal advice before entering into any legally binding arrangement.

2. We would remind agents that they will always need to carry out their own checks on the information they give in their advertising, to verify that what they are told is correct and what they say is true.

Just because the vendor is a property developer rather than a private homeowner, this does not mean the agent is absolved from undertaking appropriate due diligence, such as:

- Checking the status of the property (e.g. build in progress, build complete, resale home, tenant in situ);
- Checking the estimated completion date for off-plan properties;
- Enquiring as to the developer's experience and previous properties;
- Checking the documentation relating to the rent arrangements is in line with the marketing information;
- Recording the details of verbal conversations where material information is discussed.

Member agents may therefore wish to refer to the Propertymark Property Information Questionnaire (see Assured Advice 34).

Date Advice is Effective from (issue date): 17 12 2019



Last Review Date: 14 01 2021

Next Review Date: 13 01 2022

Primary Authority: Warwickshire County Council Trading Standards Service

Co-ordinators: The Property Ombudsman and Propertymark

Supporting Regulator: Not applicable

For Publication on the Primary Authority Register: Yes

Geographic Applicability: This advice applies throughout the United Kingdom.

Scope: This advice is applicable to all member businesses acting in a capacity of estate agent.

How to obtain up to date copies of this advice: Current copies of this advice may be obtained via the member organisations' websites:

www.tpos.co.uk/members/assured-advice/assured-advice-information

and

www.propertymark.co.uk/working-in-the-industry/primary-authority-advice/.